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No. 89-545

**IN THE SUPREME COURT
OF THE UNITED STATES**

October Term, 1989

LAWRENCE E. BOWLING,
Petitioner

v.

DAVID G. BRONNER, etc., et al.,
Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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THE HISTORY OF THE CITY OF BOSTON

FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME
BY
JOSEPH NEALE

VOLUME I
FROM THE FIRST SETTLEMENT
TO THE YEAR 1630

BOSTON:
PUBLISHED BY
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AT THE
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IN THE
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BY
JOSEPH NEALE

AT THE
PRINTING OFFICE OF
JOSEPH NEALE

REPLY BRIEF FOR PETITIONER

In their Brief in Opposition, instead of attacking the issues, Respondents attack Petitioner. They try to portray him as a man who, after being "dismissed from his position as Professor at the University of Alabama", filed numerous frivolous lawsuits against innocent officials. More than half their Table of Authorities is devoted to said cases, which have no bearing upon the issues of this case, other than the fact that Petitioner could not apply for retirement benefits without mooting his cases against officials of the University of Alabama. But that is not the reason that Respondents listed said cases. They listed them to malign Petitioner.

The two cases against James N. Carter and other officials of the Department of Industrial Relations were the same case, filed simultaneously in federal and state courts. Respondents studiously neglect to state that Bowling won that case in state court. The cases against David Mathews, Frank Rose, and Charlie Scott were the same case. Bowling won part of that case. Not a bad batting average for a pro se layman, considering the fact that the average lawyer loses half his cases.

Respondents devote more than a page of their brief to Petitioner's discharge and his lawsuits but studiously neglect to state that he was discharged (1) because he complained about being solicited by his department chairman for a political contribution and about the over-emphasis on football and the under-emphasis on academics, (2) because he refused to teach a low-level course without being given an order to do so, and because he was tried by a jury composed of the defendants' employees. Respondents also neglect to state that the Board of Trustees of the University of Alabama relieved both Frank Rose and David Mathews of their positions as President. Respondents further neglect to state that McDowell Lee, Secretary of the State Senate and a member of the

THE HISTORY OF THE UNITED STATES

The history of the United States is a story of growth and development. It begins with the first settlers who came to the continent in search of a new home. These early pioneers faced many hardships, but they persevered and built a nation that would become one of the most powerful in the world. The story of the United States is a story of the triumph of the human spirit over adversity.

The early years of the United States were marked by a period of exploration and discovery. Explorers like Christopher Columbus and John Cabot opened up new worlds for the world to see. Their discoveries led to the establishment of colonies and the eventual formation of the United States. The story of the United States is a story of the triumph of the human spirit over adversity.

The United States has a rich and diverse history. It is a country that has been shaped by the contributions of many different peoples and cultures. The story of the United States is a story of the triumph of the human spirit over adversity. It is a story of a nation that has grown from a small colony to a global superpower. The United States has a long and proud history, and it is a country that continues to inspire and lead the world.

Employee's Retirement System, brought suit against Respondent David Bronner, charging that Bronner:

(a) Without legal authority and for direct personal gain caused State and Retirement System funds to be paid for personal attorney's fees and other charges associated with the defense of the aforementioned cause of action [Meadows v. Bronner, Civil action No. CV 79-397-P];

(f) Received from stock and bond brokerage firms or representatives illegal gifts and payments of hotel and entertainment expenses, including meal, cocktail, and room charges at conventions in Gulf Shores, Alabama, and elsewhere, and received from the same sources illegal payments for air travel to California and other locations;

(g) Caused State of Alabama and State Retirement System monies to be expended for direct personal gain, in the form of attorney's fees and other payments represented in Retirement System documents to be for "consultation with the Board of Control."

McDowell Lee v. David Bronner, 404 So.2d 627, 628 (Ala. S.Ct. 1981). The Circuit Court, Montgomery County, dismissed; the Alabama Supreme Court reversed and remanded; and the case was settled out of court.

Respondents also neglect to state that Petitioner had the best publication record in his department, that his scholarly publications had been reprinted in textbooks and published around the world by the U. S. State Department, and that he had been awarded major Fellowships by the American Council Of Learned Societies and the Ford Foundation, as well as major Research Grants from both the University of Alabama and Texas Tech University. These facts are public record. The Court is requested to take judicial notice.

At p. 2, Respondents erroneously contend that they are "state officials who are not 'persons' within the purview of 42 U.S.C. §1983 as this Court recently held in *Will v. Michigan Department of State Police*, 57 L.W. 4677 (June 15, 1989)", 109 S.Ct. 2304. The fact that the

Michigan Department of State Police is an "arm of the state" was never disputed; and the Court stated that "our ruling here . . . applies only to States or governmental entities that are considered 'arms of the state'". 109 S.Ct., at 2311. Both the majority opinion and the two dissenting opinions in *Will* suggest that the Court would find that the Teachers' Retirement System of Alabama is not "an arm of the state" but a corporation created "for the purpose of providing . . . benefits . . . for the teachers of the state of Alabama". Alabama Code §16-25-2. The TRS law, §§16-25-1 et seq., makes clear that TRS is a separate entity from the State, has financial independence, holds property in its own name, has full autonomy and control, and performs no "governmental" function but acts only in a "proprietary" and "fiduciary" capacity and for the benefit only of said teachers, who make contributions to the TRS and who constitute only 3% of the "public" of Alabama. Sec.16-25-2 provides that TRS "shall have the power and privileges of a corporation" and that:

Any provision of the law to the contrary notwithstanding, the boards of control of the teachers' retirement system of Alabama and the employees' retirement system of Alabama shall have vested in them all powers necessary to fulfill their fiduciary duty to members of each respective system including the power to sue and be sued....

Respondents, in effect, concede one of the issues on which this Petition is based, the failure of Respondents to give Petitioner clear and timely notice of the change in the law allowing members to retire after age 60 without penalty for retirement before age 65. Although they state that "the 1969 handbook, the newsletter, and other items published and distributed by the Teachers' Retirement System in 1969 highlighted this change in benefits", they do not state to whom these materials were "distributed" and do not allege that they ever supplied any of these materials to Petitioner. Moreover, they admit that the "handbooks and other publications prepared in subsequent years while correctly explaining the



benefits then in effect, have not specifically noted that such benefits differed from those provided before 1969." P. 5. Petitioner wrote Respondents in 1972, requesting information about his retirement rights; they posted him a letter and a copy of the 1971 handbook, neither of which mentioned the change in the law or his right to retire without penalty. R3-105-Exhibits A,B,C. Petitioner has sworn that Respondents never at any time informed him of his right to retire at age 60 without penalty. R3-108-11, ¶6.

Respondents' primary argument for denying the Petition is that the lower courts ruled against Petitioner. Three times, they repeat that the district judge found that Petitioner's First Amendment claim was an "after-the-fact fabrication". Pp. 6, 7, 8. Such finding is a flagrant violation of F.R.C.P. 56, which provides that no court may make any finding of fact on a motion for summary judgment:

"The message is clear; the party who defended against the motion for summary judgment will have the advantage of the court's reading the record in the light most favorable to him, will have his allegations taken as true, and will receive the benefit of the doubt when his assertions conflict with those of the movant." Wright, Miller & Kane, *Federal Practice and Procedure*, Civil 2d §2616, citing *Bishop v. Wood*, 1976, 426 U.S. 341, 96 S.Ct. 2074, and other cases.

Respondents repeat *ad nauseam* that the appellate court panel ruled against Petitioner. If the appellate panel had not ruled against Petitioner, why else would he petition for a writ?

Most of Respondents' argument consists of mere bald assertions. In their whole brief, there is not one reference to the record, enabling the Court to verify their assertions.

Respondents contend that Petitioner was not entitled to notice of the change in the law eliminating the penalty for retirement before age 65. They



further contend that this right is not mandated by *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 70 S.Ct. 652 (1950). But the Court has repeatedly held: "When protected interests are implicated, the right to some kind of prior hearing is paramount." *Board of Regents v. Roth*, 404 U.S. 564, 569-570, 92 S.Ct. 2701, 2705 (1972), and cases there cited. Moreover, both the District Court of Montgomery and the Alabama Supreme Court have reprimanded Respondents for their adversary attitude toward their beneficiaries and have admonished them to make special effort to keep their members properly informed of their retirement rights and to help them obtain the maximum benefits provided by law. *Employees' Retirement System v. McKinnon* (actually against the Teachers' Retirement System), 349 So.2d 569, 571, 573-574 (Ala. 1977).

Four years after the *McKinnon* rulings, Petitioner appeared before the Board of Control on June 26, 1981, and requested permission to present argument on Respondents failure to keep him informed of his rights. Chairman Paul R. Hubbert denied the request, and the other Board members acquiesced in his denial, RE 39; R3-108-Bowling's Affidavit, pp. 13-14. All are personally and officially liable.

Petitioner has twice requested the clerk of the U.S. District Court for the Middle District of Alabama to certify the record and transmit it to this Court. Apparently, he has not done so. This Court is requested to request the record.

CONCLUSION

Respondents' Brief in Opposition states no valid reason for denying the Petition.

Respectfully submitted,

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